

Briefing Pack for Awareness Raising Sessions: Youth Offending & Antisocial Behaviour Legislation

Note: This briefing pack has been prepared on the basis of the legislation and draft guidance from the Executive.
Further information is available in the source documents, available at:
<http://www.scotland.gov.uk/publications/recent.aspx>

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Part One: The Antisocial Behaviour etc (Scotland) Act 2004 **Provisions for 12 – 15 year olds**

Definition of Antisocial Behaviour

A person engages in antisocial behaviour if he/she

- a) acts in a manner that causes, or is likely to cause alarm or distress; or
- b) pursues a course of conduct that causes, or is likely to cause alarm or distress, to at least one person who is not of the same household as them. 'Conduct' includes speech and 'a course of conduct' must involve conduct on at least two occasions.

Acceptable Behaviour Contract (ABC)

Early interventions can include use of an Acceptable Behaviour Contract (ABC). This is a written agreement between an individual (child or adult) involved in antisocial behaviour and any relevant agencies, for example the police, social work or school. The contract sets out the behaviour that the person has agreed to stop, and in the case of a young person, the contract should also set out the supports that are available to help stop the behaviour.

ABCs are voluntary, but should specify that legal action may follow as a consequence of a breach of its terms. ABCs can be used with or without referral to the children's Reporter, and can be a diversion from referral to the Reporter.

Antisocial Behaviour Order (ASBO)

ASBOs are civil orders that exist to protect the public from behaviour that causes or is likely to cause alarm or distress. The Sheriff court imposes an ASBO following an application from a local authority or registered social landlord (e.g. housing association etc).

An ASBO contains conditions prohibiting the person named from doing anything specified in the order, such as verbally abusing named persons or entering defined areas. The orders are not criminal penalties and are not intended to punish the offender. However, breach of an ASBO is a criminal offence.

Three conditions need to be satisfied for the imposition of an ASBO:

- the specified person is at least 12 years of age
- the specified person has engaged in antisocial behaviour towards a person or persons
- an antisocial behaviour order is necessary for the purpose of protecting people from further antisocial behaviour by the specified person.

There should be a presumption against making an early application for an ASBO, and an interim ASBO, in cases involving under 16s. There are a wider range of alternatives to consider, and professionals should make efforts to identify early interventions well before the stage of using an ASBO.

ASBOs are only intended to deal with a small number of persistently antisocial young people for whom alternatives are not working. In most cases when an ASBO is being considered, a young person will already be well known to the Children's Hearings system.

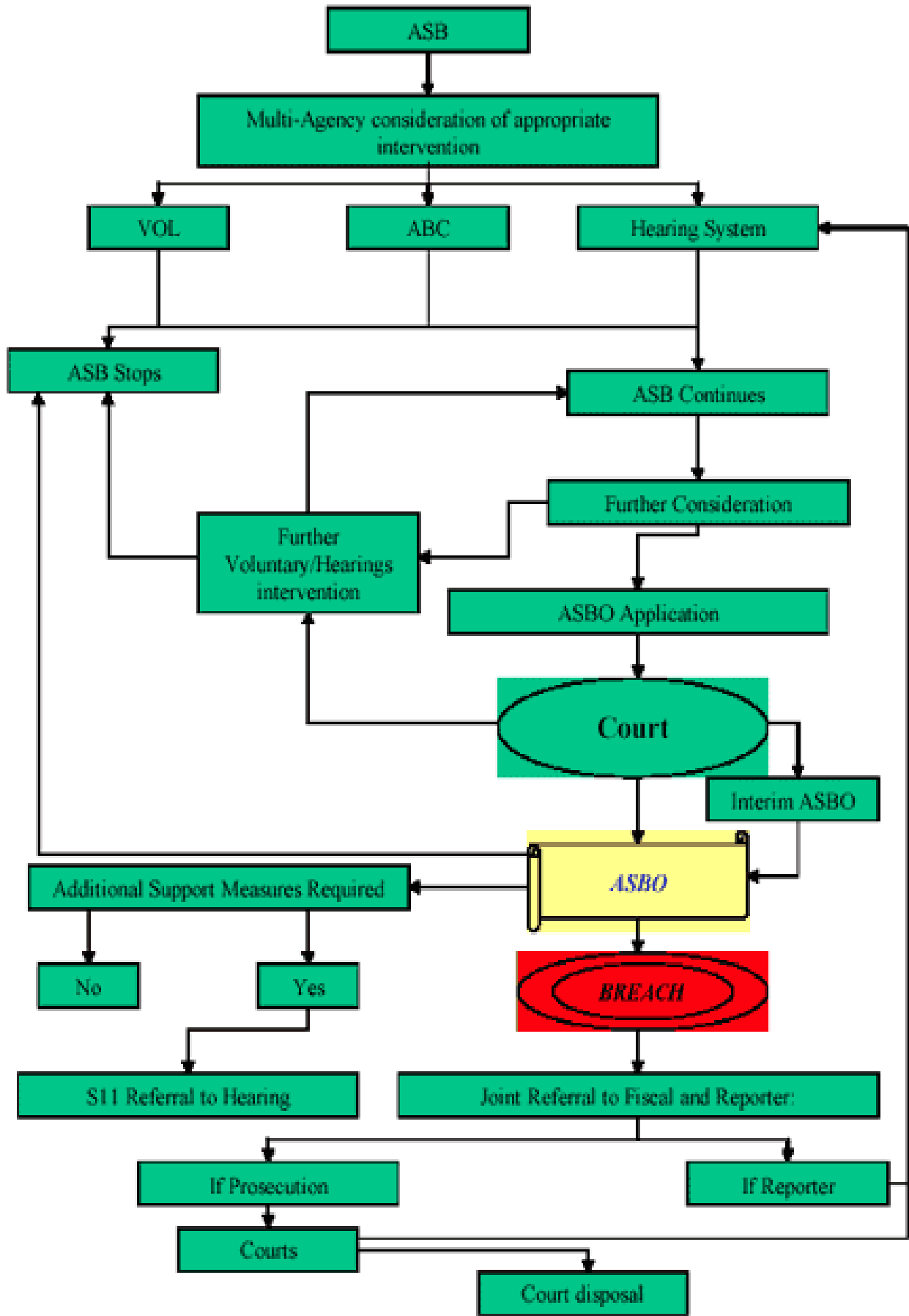
ASBOs for 12-15 year olds will be targeted at young people for whom a supervision requirement and/or other existing measures have not proved effective in changing their behaviour. In these circumstances an ASBO should complement work with a young person through the hearings system.

In considering an application for an ASBO for a 12-15 year old, the young person's parent or guardian and social worker (where they have one) should be fully involved in any meetings or discussions that take place prior to the application.

The guidance also recommends that where a relevant authority considers that an application for an ASBO is appropriate it should:

- involve its own solicitors
- consult with other bodies as directed in the Act
- collect the evidence
- indicate, in writing, the possibility of an application to the person against whom the order would be sought
- decide on the terms of the order i.e. what restrictions would apply
- decide on the duration of the order
- consider what further measures of support would be appropriate
- liaise closely with the Sheriff clerk

A summarised process for managing the full ASBO process for 12 – 15 year olds is set out overleaf.



ASBO Application Process

Prior to making an application for either an interim or full ASBO in respect of an under 16, applicants must consult relevant partner agencies including the Principal Reporter. In Highland this consultation will take place at Youth Offender Forums, with links with Area Housing Managers about equivalent processes for adults (**see separate paper**).

This consultation will also apply for 16 and 17 year olds on supervision, although there is no legal requirement for this, or for an advice Hearing to be held.

If it is decided that an application for an ASBO is appropriate, the local authority or registered social landlord makes the application to the Sheriff. Highland Council is establishing a specialist team of investigators, supported by a solicitor, who will support Youth Offender Forums to consider and make applications.

The Sheriff is required to have regard to advice provided by a Children's Hearing before determining an application for a full ASBO for a 12 - 15 year old. Therefore before such an application can be determined, the Reporter will arrange a Children's Hearing for the purpose of obtaining their advice as to whether an ASBO is necessary for protecting the victim(s) from further antisocial behaviour by that child.

Where an application for an ASBO is made, and the Sheriff is satisfied that all the conditions are met, an interim ASBO can be imposed pending the hearing for the full ASBO. Before an interim ASBO can be imposed on a child the Sheriff must have regard to any views expressed by the Principal Reporter.

The question of whether the hearing of an ASBO application is held in private is a matter for the court, although there is a presumption that cases involving under 16s will be in private.

Where an ASBO is granted against a person aged 12-15 years, it is important that not only is their behaviour tackled by the introduction of a prohibitory order, but that they are helped to take positive steps to address their behaviour. This will mean particular services on the basis of assessed need, and it may include intensive support.

When granting an ASBO (or interim ASBO) on a 12-15 year old, whether or not the child is on supervision, the Sheriff has the power to require the Reporter to refer the case to a Children's Hearing. It will be at the discretion of the Sheriff whether to exercise this power, but it is expected that the evidence submitted to the court with the ASBO application will contain a recommendation from the local authority and/or Reporter that a hearing be convened. This power has led to the introduction of a new ground for referral, and a new reason to call for a review of a supervision requirement within the Children (Scotland) Act 1995.

Introducing the power of the Sheriff to refer a young person to a hearing when granting an interim ASBO means that a young person could be referred to a hearing for consideration of their wider support needs as well as for the advice the Sheriff must seek on whether an ASBO is necessary to protect people from antisocial behaviour. Where this occurs it is expected that a single hearing will be called to look at both aspects under consideration, although the Reporter has discretion to arrange two separate hearings.

ASBO Right of Appeal

Either the applicant or the person against whom the order was granted can appeal the Sheriff's decision. The appeal can be made to the Sheriff Principal or Court of Session. The order remains in force pending the outcome of the appeal. It is however possible to apply for an order to be varied or revoked whilst an appeal is pending.

Review of ASBOs

The relevant authority should review the situation on a regular basis, and certainly every six months, to assess the effect the ASBO is having.

At least once per annum, the relevant authority should consider whether the order could be varied or revoked, and formally record the decision. For 12-15 year olds, as they are likely to be involved with the Children's Hearings system, consultation should take place with the Reporter and young person's supervising officer to check on the case.

In Highland, these processes will be conducted at the Youth Offender Forum.

Variation and revocation of ASBOs

Orders may be varied or revoked on an application from the applicant authority or the person against whom the ASBO is made. Changing circumstances can thus be taken into account.

Where a person aged 12-15 applies for an order to be varied or revoked, the Sheriff shall obtain the views of the original authority and the Reporter, before coming to a decision.

Breach of an ASBO

If a person who is subject to an ASBO or an interim ASBO does anything that the order prohibits, without reasonable excuse, they shall be guilty of an offence. The Act stipulates that a breach of an ASBO by a person under 16 will not lead to detention where no other offences are involved. Other disposals are open to the court, but there may be question marks about how appropriate or relevant these are to young people. Accordingly, there needs to be particular consideration of what added value an ASBO would bring to existing interventions with a 12-15 year old.

Breach of ASBOs by 12-15 year olds and 16 & 17 year olds on supervision will be jointly reported to the Procurator Fiscal and the Reporter, as is appropriate in accordance with the Lord Advocate's guidelines. The Procurator Fiscal has the discretion to pass such cases to the Reporter where appropriate.

If criminal proceedings are taken against a child for breach of an ASBO, and he/she pleads or is found guilty, the court shall, if the child is subject to a supervision requirement, seek advice from the Children's Hearing on how the child might be treated, or indeed remit the case to the hearing for disposal. If the child is not subject to supervision, the court may still seek the advice of a hearing.

If the case is dealt with by the Reporter, the Reporter or a Hearing will take into account what more can be done to address the child's behaviour and needs, considering the ranges

of options available to them. If grounds are accepted/established where a breach of an ASBO is referred to a Hearing then the Rehabilitation of Offenders Act 1974 applies.

Intensive Support and Monitoring Service (ISMS)

The Antisocial Behaviour Act provides that electronic monitoring can only be imposed as part of a package of support measures. This includes the Intensive Support Service, which is explained in detail in a separate briefing paper.

'Intensive Support and Monitoring Services' (ISMS) has become the terminology for Movement Restriction Condition or what is generally termed 'tagging' in the press. Accordingly:

ISMS = Intensive Support Service + a movement restriction condition

A movement restriction condition added to a supervision requirement, restricts the child's movements in such a way as may be specified in the supervision requirement. For instance, that the young person must be 'at home between the hours of 9:00pm and 7:00am'. It also required the young person to comply with such other arrangements for monitoring their movements as may be specified.

Monitoring will almost certainly involve electronic tagging. It may involve manual measures.

The Act provides that electronic monitoring can only be used as an alternative to secure accommodation and is subject to the same conditions of use, i.e. that one of the following conditions is met:

- a) that the child, having previously absconded, is likely to abscond and, if he/she absconds, it is likely that his/her physical, mental or moral welfare will be at risk
- b) that the child is likely to injure himself or some other person.

ISMS should be implemented and reviewed like all supervision requirements imposed by a hearing. It is not a punishment. It provides a structure and basis for accountability and within this structure, intervention work can take place to engage the young person and address those factors identified as contributing to the need for secure care.

Children's Hearings should not consider ISMS as an appropriate disposal unless an assessment and structured plan setting out the monitoring proposals and the intensity of service planned for the young person is made available. Children's Panels should consider and discuss the plan at the Hearing, and ensure that any variations are discussed thoroughly. The plan should propose a review period after which the case returns to a Hearing. The Hearing is able to require a variation of this period and should also consider any additional conditions over and above those proposed.

Given that ISMS is a condition of a supervision requirement the decision can be appealed and reviewed in the normal manner.

Additional Orders resulting from the Antisocial Behaviour Act

Parenting Order

A parenting order can be made by a court in respect of a child where application is made by the local authority or the Principal Reporter. This application is made where a child is engaged in antisocial behaviour and that the making of the order is desirable in the interests of preventing the child from engaging in further such behaviour. It also applies where the child has engaged in criminal conduct and the making of the order is desirable in the interests of preventing the child from engaging in further such conduct or that the making of the order is desirable in the interests of improving the welfare of the child.

Where it appears to a Children's Hearing that it might be appropriate for a parenting order to be made, the Hearing may require the Reporter to consider whether to apply for such an order. Any such requirement must specify the 'parent' on whom the order should be made and whether the order is sought because of concerns about the child's behaviour or welfare

Before the local authority can make an application they must consult the Principal Reporter and vice versa.

These orders can require specified persons to comply with conditions contained in the order for a period not exceeding 12 months. They are currently being piloted in other areas of Scotland.

For the purposes of parenting orders 'parent' has the same meaning as 'relevant person' in the Children (Scotland) Act 1995.

Community Reparation Order

This order requires an 'offender' (over the age of 12 years) to comply with the directions of a local authority supervising officer. This supervising officer will be responsible for determining which prescribed activities the offender should undertake for the specified number of hours, determining when and where the activities should take place and giving direction to the offender to ensure the activities are completed. The activities will be designed to enable reparation to be made and to reduce the likelihood of re-offending.

Highland is one of the three pilot areas for Community reparation Orders for all offenders) and this is expected to begin in January 2005.

There is no direct Reporter or Hearing involvement in community reparation orders, but there may be links with breaches of ASBOs.

Restriction of Liberty Order

A restriction of liberty order may restrict an offender's movements to such an extent as the court thinks fit. It may require the offender to be in such place as may be specified for such period or periods in each day or week as specified, or alternatively it may prevent the offender from being in such place or places or such class of place or places, at such time as may be specified. However, the court may not require the offender to be in any one place or places for a period or periods totalling more than 12 hours in any one day.

For an offender under the age of 16, the court must not make a restriction of liberty order unless it is satisfied as to the services which the local authority will provide for the young person's support and rehabilitation during the period when he/she is subject to the order.

There is not direct Reporter or hearing involvement in restriction of liberty orders.

Dispersal of groups

Dispersal applies where a senior police officer has reasonable grounds for believing any members of the public have been alarmed or distressed as a result of the presence or behaviour of groups of two or more persons in public places, and that antisocial behaviour is a significant, persistent and serious problem in the relevant locality.

The dispersal provisions of the bill are not intended to be used as a first resort and they are not intended to be used in isolation. Nothing in these provisions would allow a police officer to move on persons of any age who are merely gathering peacefully in streets of their community. These provisions are intended for use as part of a package of measures agreed with partner agencies, only in circumstances where other approaches have been tried but where the antisocial behaviour in question has become significant, persistent and serious where other possible interventions have failed.

Closure of premises

A closure notice may only be authorised where a senior police officer has grounds for believing that at any time during the immediately preceding 3 months a person has engaged in antisocial behaviour on the premises; and the use of the premises is associated with the occurrence of relevant harm; and is satisfied that the local authority has been consulted; and reasonable steps have been taken to establish the identity of any person who has responsibility for the premises.

Where a closure notice has been served, a closure order can be applied for, accompanied by evidence that will enable the sheriff to determine the application.

Noise nuisance

The provisions with regard to noise nuisance are for local authorities, and gives power to them to investigate excessive noise, issue warning notices and fixed penalties, powers of entry and seizure of equipment used to make excessive noise and approval of measuring devices.

Housing: Antisocial Behaviour Notices

Antisocial Behaviour Notices are available for local authorities to serve on landlords of relevant premises where the occupier or visitors of the premises are engaged in antisocial behaviour. These notices give responsibility and accountability to landlords for intervention in antisocial behaviour and "fill the gap" to ensure landlords take responsibility for those in their properties.

Sale of spray paint to child

The sale of a spray paint device to a person under 16 years of age shall be an offence. The legislation defines the term spray paint device as a device which contains paint stored under pressure; and is designed to permit the release of the paint as a spray.

Seizure of vehicles

Where vehicles are used in a manner causing alarm, distress or annoyance a constable may order the person driving it to stop the vehicle, or seize and remove the vehicle.

Local Authority Accountability

Failure to comply with a Supervision Requirement

The local authority already has a statutory duty to give effect to supervision requirements (s71 of the 1995 Act). In addition, a child subject to a supervision requirement is a "looked after child" for the purposes of s17 of the 1995 Act which places statutory obligations on local authorities. While a supervision requirement places obligations on the child, local authorities are expected to make such arrangements as are necessary to enable the child subject to supervision to meet those obligations.

The Antisocial Behaviour Act strengthens the powers of a Hearing to obtain appropriate resources from a local authority to support a young person subject to supervision. It remains important though to ensure that the "minimum intervention principle" of the 1995 Children's Act is maintained in practice, and that when voluntary interventions are considered appropriate the services are made available.

Where it appears to a Children's Hearing that the relevant local authority are in breach of a duty imposed upon them, the Hearing may direct the Principal Reporter to take steps to report this matter to the Sheriff Principal who may require them to perform that duty.

The Children's (Scotland) Act 1995 has been amended to state:

- a) a Children's Hearing may, for the purpose of enabling a child to comply with a supervision requirement, impose such duties on the relevant local authority as may be specified in the supervision requirement.
- b) the duties imposed may include that of securing or facilitating the provision for the child services of a kind other than that provided by the relevant local authority.

Having imposed such a duty or duties the hearing may then monitor the situation and take action if the local authority is in breach of duty. This is done by setting a date for an early review under section 70 subsection (7) of the Children's Act. This does not mean that a review date should be set in every case. However, if there is genuine concern that the supervision requirement will not be implemented the hearing should do so.

Where at such a review it appears to the Children's Hearing that the relevant local authority continue to be in breach of a duty imposed on them, the hearing may direct the Principal Reporter to give the authority notice of an intended application to the Sheriff Principal to enforce the duty.

At this point the Reporter, on behalf of the Principal Reporter, must give written notice of an intended application on the local authority setting out the respects in which they are in breach of duty and stating that if the authority does not comply with that duty within a period of 21 days (beginning with the day they receive the notice) the Reporter may make an application to the Sheriff Principal. Copies of this notice must also be sent to the child, relevant persons and safeguarder (if there is one).

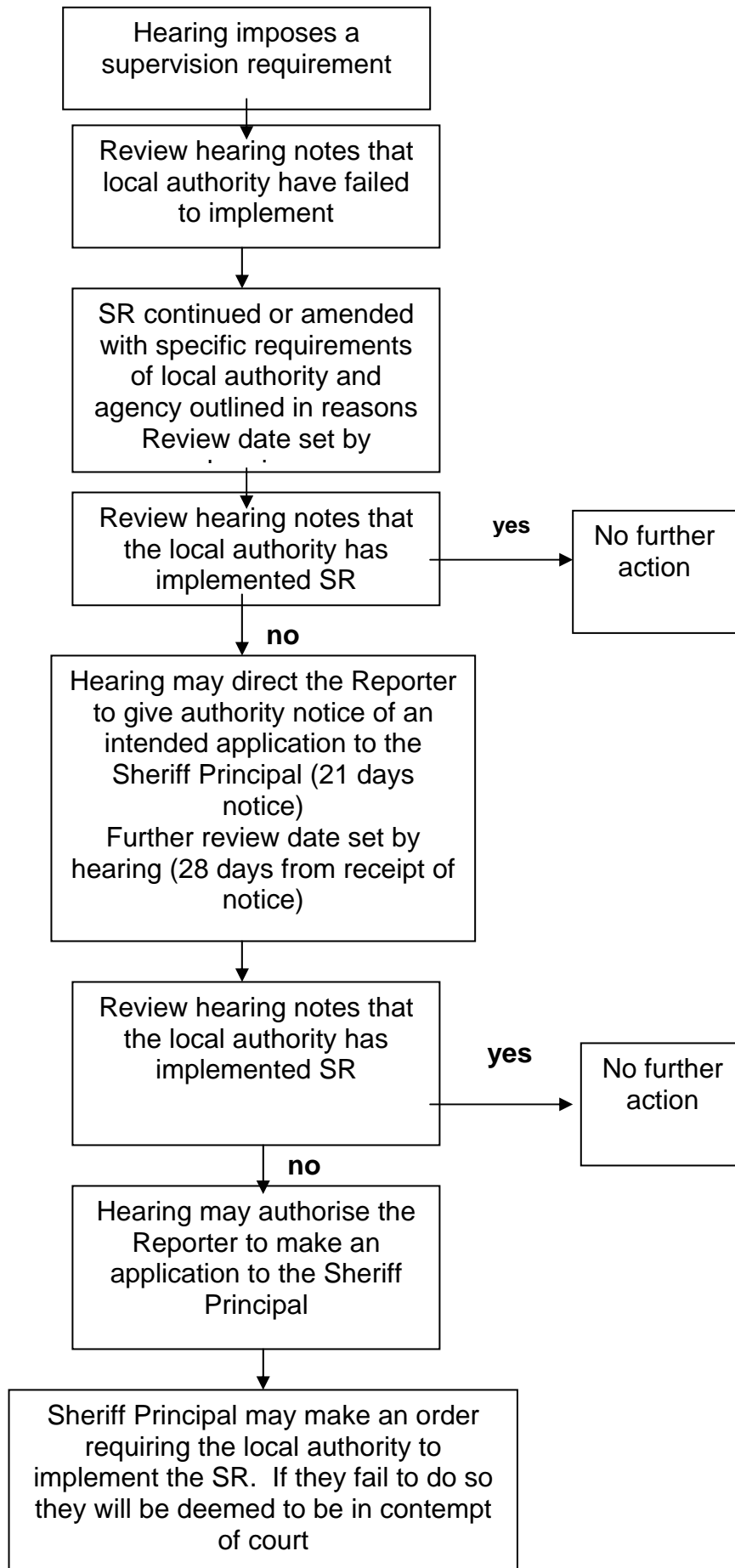
Where a Children's Hearing have made a direction, they must then direct the Reporter to arrange for a further review hearing to take place on or as soon as is reasonably practicable after the expiry of the period of 28 days beginning with the day on which the notice of intended application was given.

If at this further review hearing it appears to the Children's Hearing that the relevant local authority has still not implemented the supervision requirement, the hearing may authorise the Principal Reporter to make an application to the Sheriff Principal.

The Act clearly states that in deciding whether to apply to the Sheriff Principal the Reporter shall not take into account any factor relating to the adequacy of the means available to the relevant local authority.

The Sheriff Principal may, on application from the Reporter, make an order requiring the local authority in breach of a duty imposed on them, under section 71 of the Children (Scotland) Act 1995, to perform that duty. This order is final and if the local authority fails to comply with the court order they will be held in contempt of court.

This process is set out overleaf.



It is the local authority as a whole that has 'corporate responsibility' for implementing supervision requirements. This includes schools, youth work, housing, leisure etc as appropriate. It is not, as is sometimes perceived, the responsibility of the Social Work Service alone.

Local authorities and partner agencies are asked to prepare a "menu" of the services and supports that are available for young people through the hearings system. This menu should cover the full range of interventions on offer.

Voluntary sector service providers will provide many of the services and support that will make up each authority's 'menu of services'. The failure of a voluntary organisation to provide a service set out in a supervision requirement should not by itself be enough for a hearing to consider action against a local authority. The authority will however be expected to take all reasonable steps to work with the organisation to identify why the service is not being provided and what can be done to make the service available as quickly as possible.

There will be an increasingly explicit expectation that every young person who is referred to a hearing should have a coherent multi-agency inspection of their needs, accompanied by a care/action plan. The Reporter will expect to receive these no later than 3 days before the date of any Hearing.

The care plan will be developed from the comprehensive assessment of the young person. It should identify the needs of the young person, assess the risks associated with those needs, set out the options for the services/interventions that are recommended to help address those needs and who will deliver them.

The care plan should also set out the proposed case management arrangements and the intensity of contact and supervision required. An appropriate care plan will be crucial to effective intervention. All agencies involved in the delivery of the care plan should be involved in drawing it up, and give a commitment to delivering their element of it. The Executive have commissioned the Social Work Services Inspectorate to draw up a draft national standard for contact with children on supervision (**see Appendix 1**). This is presently subject to consultation.

If a Children's Hearing decides to make, continue or vary a supervision requirement, Panel Members must provide a clear rationale in writing for the decisions they have taken and why. Panel Members should consider the care/action plan, and decide whether this will meet the child's needs. They should also consider the services available locally (with which they should be familiar) and identify whether any other services are appropriate.

Where on making, continuing or varying a supervision requirement, the Hearing has reason to believe that the local authority may not or has not carried out its general legal duty in respect of the supervision requirement, the hearing should set out in detail within the reasons for decision and the supervision requirement itself the duties that the local authority is expected to carry out to enable the child to comply with the supervision requirement or any condition contained within it. It should also set out where appropriate the services that the local authority is expected to deliver and who will be providing the services (e.g. named local authority services or other agencies such as Health) when provision of these services should begin and the intensity and duration of the intervention. In some cases it may also

be necessary to set out clearly the length of time and frequency of social worker involvement with the young person and identify clearly the responsibilities on the child and their parents.

Where appropriate, when setting out the duties in the supervision requirement the Hearing should recommend a review date. It may not always be necessary to set a review date at this time, as the Hearing may be satisfied that the local authority will carry out the duty as imposed. It has to be borne in mind that every review Hearing requires the circumstances of the child's case to be considered fully, and that the child and relevant persons have a legal right and obligation to attend. It is important that the child's welfare remains the paramount consideration at every Hearing.

Written reports outlining the decision of a hearing should be written in plain English so they are clear and understandable to all parties. Reasons should indicate clearly the main issues that were considered, the needs identified and why a supervision requirement, and the various elements within it, were considered the best way to address those needs. Where appropriate, it should also set out the outcomes the hearing expects supervision to achieve. In keeping with best practice, reasons should indicate that where the child has expressed a view that this has been taken into account.

As a matter of best practice young people and their families will be fully informed about the hearings process, including what will happen during and after the hearing itself. Children over 12 should also receive the same reports on the case that are given to panel members and relevant persons. Children between 8 and 12 may receive reports if they wish to see them. The Hearing should ensure that the child understands what is in the reports and has an opportunity to express their views.

At the end of the Hearing the Chair will inform the young person and their family of the Hearing's decision and what the reasons for that decision are. The Reporter will send written notification of the decision, a copy of the reasons for the decision and a copy of the supervision requirement to the child and their family (and the local authority) usually within 5 working days of the Hearing. When a supervision requirement is imposed, this written notification should make clear that it is compulsory and that it is not the choice of the child whether or not to comply with it. It should also set out the roles and responsibilities of the young person and service providers and set out what will happen if that service is not provided or if the young person fails to comply.

In the small number of cases where a Hearing favours a different course of action to that recommended by the local authority, there should be full discussion of the different options between the Panel Members and the officers present. Ultimately, if the decision of a Hearing differs from that recommended by the local authority the differences and the reason should be recorded in the formal decision. The local authority will still be expected to take the necessary steps to implement the supervision requirement in these circumstances.

Panel members will be expected to use their judgement about what constitutes a failure to implement that is serious enough to warrant a direction to the Reporter. It should be a specific failure that, if left unchecked, will have a serious impact on the young person. For example, failures such as the non-appointment of a case manager, or the non-delivery of key services or support measures might be considered serious enough to warrant a direction. A direction is probably not appropriate if the failure to provide is in respect of less

integral services or minor elements of a service. Where the hearing directs the Reporter to issue a notice they should record this clearly in their reasons for decision.

The role of the Reporter prior to a hearing taking place is largely unchanged. They should be fully involved in joint-agency working and information exchange between all relevant local partner agencies. On receipt of a referral in respect of a child they will investigate the child's case by evaluating information provided from a range of sources, social work, police, schools etc. They will decide whether there is a need for compulsory measures of supervision — in which case they will refer the child to a hearing.

Reporters will record data on the use of the new legislative powers, including: the number of occasions when informal discussions are held with local authorities; the number of formal notices issued; the number of applications made to the court and orders granted; outcomes when orders are granted; which aspects of supervision requirements are not being implemented and the reasons for non-implementation. Data will be broken down by ground for referral and local authority area.

Failure to provide education for excluded pupils

The 1980 Education Act requires that an authority should provide education for an excluded pupil without "undue delay". The Additional Support for Learning Act, once enacted in 2005, will place a further specific duty on a local authority to meet the individual educational needs of all children in their area.

Although the duty to provide education for an excluded pupil arises immediately, appropriate alternative provision may take time to arrange. It is therefore expected that in most cases education authorities will put effective arrangements in place within 10 school days of the exclusion taking place.

It is accepted that arrangements for education provision may vary according to the needs and circumstances of the child. Local authorities will, for example need to consider whether the child has any additional support needs or a disability and the impact or influence this should have on the education to be provided. Where a place in an alternative school or full-time provision is not possible, home tuition or other forms of contact with the pupil at home may be arranged, or involvement in other structured programmes to address the behaviour or needs of the pupil.

Children's Hearings have however from time to time discovered that children who have been excluded have not then received education. Reasons for this vary: local authorities may have offered services which have not been taken up; the child may have been excluded from several schools or may have been moved between foster and family carers.

Accordingly, the 2004 Act enables Reporters, in attending to their responsibilities, to make a referral to Scottish Ministers where it appears to them that there has been a failure on the part of a local authority to fulfil its statutory obligations to provide education to excluded children, and also provides that Hearings may require the Reporter to take such action. Ministers may then seek a fuller investigation to be undertaken, and require action to be taken if they decide that there has been a failure on the part of the local authority.

The Executive believes that this process fills a gap in that HMIE inspection is currently the way that any failure to meet statutory provision is usually identified, but that this process may not be alert for those children who are not on any school roll through moving placement or persistent exclusion.

Where it appears to a Reporter or a hearing that these steps have not been taken it will be possible for a decision to be taken on whether to refer the case to Scottish Ministers.

Any referral from a Reporter must be copied to the education authority in question, i.e. the one in whose area the child was last a pupil (except for circumstances when a family has moved home outwith the authority area whilst the child is excluded, when it would be the new authority who would need to provide).

Hearings and Reporters when considering cases involving excluded children (including those with additional support needs) will want to look at whether appropriate education is being provided to secure the desired outcomes for the child. Where it appears that appropriate provision is not being made, Hearings and Reporters will need to consider whether "undue delay" has occurred. That term is not defined although it is suggested that ordinarily the delay may be no more than 10 schooldays. Circumstances are however likely to differ from case to case requiring an assessment of whether such delay has arisen.

Hearings and Reporters will need to take account of all relevant facts and circumstances, including the circumstances of the child and the services available locally, before reaching a decision. It will also be important to consider previous patterns of exclusion and attendance of the child, the efforts made by the education authority and school to fully engage the child in education and the willingness of the child and family to co-operate with these efforts. Effective liaison between hearings and Reporters and the education authority mechanisms for assessing and reviewing children's educational support needs will be essential (such as School Liaison Groups, Pupil Support Groups or other multi-agency forums).

If the provision of education is part of an existing supervision requirement, a Hearing might instead refer the case to the Reporter requiring them to take matters forward under the new arrangements for failure to implement a supervision requirement set out above.

Restorative Justice

The Scottish Executive has asked local youth justice strategic teams to develop a wider range of preventative, diversionary and more intensive youth justice measures in order to prevent, address and reduce offending behaviour amongst young people. *'Sensitively managed restorative justice approaches can be in the best interests of many of the children and young people who offend and their victims'* Scotland's Action Programme to Reduce Youth Crime (2002)

What is restorative justice?

- It is a response to offending that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of the person harmed, persons responsible and communities.

- It focuses on the harms done, rather than the rules broken, showing equal concern and commitment to those harmed and to those responsible for the harm, involving both in the process of justice. It is not intended as a punishment.
- It works towards the restoration of those harmed, empowering them and responding to their needs as they see them.
- This approach enables both those affected by and those responsible for an offence to share openly their feelings and experiences in a safe and respectful way. There is an acceptance that those harmed by or responsible for an offence may not wish to take part in such a process.

Restorative processes

These are any processes in which relevant parties actively participate together in the resolution of matters arising from the offence, generally with the help of a facilitator. Each process aims to enable the participants to explore, in a safe and structured way.

- 1) *the facts* – what happened and why,
- 2) *the consequences* – how people were affected, and
- 3) *the future* – what agreements or action plan are required to be made to meet the needs of all parties, including the central needs of repairing the harm and preventing re-offending.

No meeting is held without the facilitator preparing all parties in advance.

Restorative processes in Highland are facilitated by SACRO. They include:

- Restorative Justice Conferences – normally led by two facilitators and attended by the person(s) harmed, the person(s) responsible, their respective support persons, other affected persons, where appropriate, and observers, where agreed.
- Face-to Face Meetings – can be led by either one or two facilitators and are attended by only the person(s) harmed, the person(s) responsible and observers, where agreed.
- Shuttle Mediation – involves a facilitator acting as a go-between for the person(s) harmed and the person(s) responsible.
- Victim Awareness – involves only the person responsible in one-to-one sessions with a facilitator; but it can also involve a meeting with a carefully briefed ‘surrogate’ person harmed using the format of a conference or face-to-face meeting. It can also involve group work.

A restorative outcome means;

- a) the emotional, cognitive and relational benefits felt by the parties during and following a restorative process, such as feelings of safety, increased self-esteem, the letting go of anger, increased empathy and so on
- b) an agreement or action plan reached as a result of restorative process, which may include tasks and programmes aimed at meeting the individual and collective needs and responsibilities of the parties. This may include tasks that seek to repair, either practically or symbolically, loss or damage experienced by the person harmed and programmes for the person responsible that seek to address the underlying causes of the offence (such as anger management, substance misuse, peer pressure and so on).

Police Restorative Warnings

As part of initial intervention strategies to deal with antisocial behaviour, new national guidelines on the use of police restorative warnings were issued in June 2004. The aim is that restorative warning processes will incrementally replace Senior Police Officer warnings throughout Scotland by April 2006.

Restorative warnings and police restorative conferences can be used by the police to deal quickly with relatively minor offences, often committed by first time offenders ensuring that the young person makes amends for his or her deeds. They can be used for children from ages of 8-15 (and to 16 & 17 year olds under supervision).

A police restorative warning is 'A process, facilitated by trained personnel, which involves the warning of an offender whilst addressing the impact on the victim and the community. The victim will have the opportunity to be informed of the outcome. It is focused on changing the behaviour and attitude of the young person rather than on humiliating him or her.

When a restorative warning is issued, the Reporter is involved in the process.

Protocol for referrals to restorative justice services within the Children's Hearings system

A national protocol has been developed for referrals by Reporters and Children's Hearings. It proceeds on the basis that what is offered by a Restorative Justice Service (SACRO) to a child who has offended, is a service for the child. Accordingly the protocol adopts an approach to such referrals that is similar to that adopted when a Reporter or hearing makes a referral or requests a report from other services, such as drug and alcohol projects.

Referrals by the Reporter

- the Reporter assesses whether there is sufficient evidence that the child committed an offence
- requests reports in relation to the child. If the offence meets the criteria for a referral to SACRO, the Reporter should consider requesting a report from SACRO on the child's suitability for participating in restorative justice service in relation to the offence/s.
- if SACRO assess that the child is suitable for participating, they will request details of the victim from the Reporter. The Reporter will then contact the victim to request permission for their details to be passed on; making it clear to the victim that he or she can refuse.
- The Reporter makes a final decision in the normal way based on reports received. If this decision is that compulsory measures are not required and the child is to participate in restorative justice, this is so recorded. SACRO will send a report to the Reporter at the conclusion of their work. If the decision is a referral to a Children's Hearing and the child has begun work with the RJS, the Reporter will request a report from SACRO to be made available to the hearing.

Referrals by a Children's Hearing

In most cases, a restorative justice service will have been considered and offered prior to a hearing. However, where a child has been referred to a hearing and has not yet participated in a restorative justice service, the appropriateness of restorative justice would

normally be provided in the assessment included in the background reports available to panel members.

Where this is not the case, if the hearing decide that a referral to SACRO is appropriate, in the situation of a child with accepted or established offence grounds, the following procedure applies.

- The Hearing may continue to another date and request a report from SACRO on the child's suitability for participating in a restorative justice service in relation to the offence/s. The time scale shall be 10 working days.
- If SACRO assess that the child is suitable for participating, they may proceed to offer that service even though the hearing has not yet made their final decision. If SACRO assess that the child is suitable for participating, the RJS will request details of the victim from the Reporter. The Reporter will then contact the victim to request permission for their details to be passed on; making it clear to the victim that he or she can refuse.
- The form of the restorative justice service to be offered shall be agreed between the child, his/her parents and the victim in accordance with the Statement of Principles.
- On receipt of the SACRO report, the hearing will proceed to come to a decision in the usual way.
- As voluntary participation of child with a restorative justice service is one of the principles for the use of these processes, it would be contrary to those principles to make a condition regarding the child's participation with SACRO.
- At a subsequent review hearing the social work report should include information as to the outcome of the child's involvement with SACRO.

Part Two: Protocol for Youth Offender Forums

Background

Youth Offender Forums (YOF) have proved to be effective multi-agency vehicles for the management of persistent offending. Highland's Youth Justice Strategy Group has agreed this protocol, and that Youth Offender Forums should be established by every Area Children's services Forum.

The Forum meetings are part of the Highland Youth Justice structure and any strategic issues raised at the groups should be referred on to the Youth Justice Strategy Group.

As one of the key aims of the Forum is to facilitate the Reporter's decision making process, the Reporter must have a clear locus in discussing individual cases. A clear distinction is therefore maintained between the work of the Children's Hearings System and pre-referral groups such as School Liaison Groups.

The YOF approach is very much in accordance with the December 2002 report by Audit Scotland, *"Dealing with offending by young people"*. The broad themes which came from that report were:

- the need for agencies to take prompt action – early and effective intervention
- tackling offender's behaviour together with addressing their needs in areas such as health and education
- diverting offenders away from formal judicial processes for as long as appropriate
- ensuring suitable programmes and services are widely available, adequately resourced and targeted at those most at risk of further offending.

Aims of Highland Youth Offender Forum

Leading on from the Audit Scotland report, the aims of the local forums are:

- to reduce offending through targeting services on those seen as being at the highest risk of re-offending;
- to facilitate the Reporter's investigation and decision making process;
- to co-ordinate inter-agency work with young offenders;
- to facilitate "good quality, timely information and assessments from the Police, Social Work, Education and Health professionals";
- early intervention to stop escalation of offending – positive avoidance of high tariff expensive disposals;
- to progress towards meeting national targets for youth offending;
- to consider applications for Antisocial Behaviour Order (ASBO), and to review any such orders.

Criteria for Referral

Before a young person can be referred to be discussed at a YOF, one of the following criteria must be met:

- There must be an open referral to the Reporter or the child must already be involved in the Children's Hearing System with a review pending.
- A significant offending pattern has been established.
- There is evidence of a significant risk of increased offending.
- Consideration needs to be given to an application for an Antisocial Behaviour Order.

Membership

The YOF must involve senior managers within the ACSF, and practitioners from:

- SCRA – the Reporter for the area;
- Social Work & Youth Action Team – generally SW Team Leader plus other lead workers;
- Education, Culture & Sport – as appropriate, guidance teachers/designated school managers/youth work;
- NCH – Intensive Support Service Workers & Substance Misuse Referral Scheme Worker;
- SACRO;
- Police – generally Chief Inspector/ Inspector plus local officers as appropriate;
- Health – local professional lead for children's services;
- Procurator Fiscal as appropriate.
- Housing Service, and also Registered Social Landlords where appropriate.

This is not an exclusive list; other agencies should attend as necessary.

The Chair is not fixed to a particular agency, but the experience to date where the YOFs are chaired by a senior police officer has proved particularly effective.

Process

The YOF is a meeting about cases that are an 'open file' to the Reporter. The success of partnership working and effective information sharing is dependent on effective trust between the agencies operating on an open file basis.

Information brought to the meetings must be relevant. Minutes from the meetings should be circulated directly to the professionals involved and must be handled in a sensitive and confidential manner.

The process of referral for most young people to a YOF will be as follows:

- Police compile a list of young persons who are currently coming to their attention for repeated offending or Antisocial behaviour.

- Police give list of names to Reporter to check that the criteria for referral to the YOF are fulfilled and to add any other cases which are considered high priority.
- Cases subject to consideration for ASBOs also routed by any agency to the Chair.
- List of cases distributed by Chair to agencies.
- Minute taken at meeting and action points clearly noted.
- Minute distributed and reviewed at following meeting to ensure action points have been followed through.

Procedure for Antisocial Behaviour Orders

The Scottish Executive guidance regarding Antisocial Behaviour Orders and the process which requires to be followed in order to take forward applications has important implications for the Youth Offender Forum. The application for an Antisocial Behaviour Order on anyone aged between 12 and 15 requires multi-agency discussion between the Reporter, the Local Authority, the Police and other agencies involved with the young person before any application should proceed.

It is expected that any young person being considered for an Antisocial Behaviour Order would already be likely to be within this system. It is therefore appropriate that the YOF is the primary multi-agency body for any Antisocial Behaviour Order application regarding a young person under 16.

The YOF should also fulfil this function in cases regarding young people aged over 16 but subject to supervision under section 70 of the Children (Scotland) Act 1995. Although the legal process has significant differences for under and over 16s, both categories of cases require multi-agency discussion which can be carried out within the YOF.

In considering ASBO applications, the YOF will first have to be satisfied that the case has been discussed with the Antisocial Behaviour Team. The YOF should also extend invitation to the Team to send representation when an ASBO application is being considered, in order to provide advice to Forum members regarding the application process.

The Area Housing Manager should be represented on the YOF, to ensure that links are made about equivalent processes for adults, who may be in the same family as any young person being discussed. Where the Housing Service is not represented at any meeting, appropriate links will need to be made.

It will be necessary for Forum members to be sure that all possible avenues have been tried before an application for an Antisocial Behaviour Order progresses. This should include:-

- Voluntary input from the variety of agencies available to work with the young person in their locality.
- Mediation services between young people and those they are seen as having committed Antisocial behaviour against.
- The use of Acceptable Behaviour Contracts to ensure agreement between the young person, their family and the agencies concerned about the behaviour.
- Measures available through Children's Hearing including ISS or ISMS when appropriate.

Should YOF members not be of the opinion that all available avenues have already been explored, they should suggested possible courses of action and if appropriate, continue to

monitor the case through the YOF. It will not be appropriate to monitor the case through the Youth Offender Forum should the criteria for referral to the YOF not be otherwise met. In such cases, progress will be monitored through arrangements appropriate to the measures used to provide services.

Where all possible measures have been tried and patterns of behaviour still persist, YOF members will have to decide whether the most appropriate course of action would be an Antisocial Behaviour Order application, or continuation of other existing measures which may not have had an impact as yet but may make some impact if given further time to take effect.

In cases where an application to Court is a possibility, YOF members should also consider the possibility of breach of any Order made, and if such a breach did occur, how they would see the case proceeding beyond this. This consideration will ensure that ASBO applications proceed only where it is clear that the Order is likely to make a difference and prevent repetition of the concerning behaviour with all eventualities having been considered.

Where the Youth Offender Forum is clear that there is a pattern of behaviour being displayed that is Antisocial and that there are no other available measures, it may recommend the use of an Antisocial Behaviour Order.

If an Antisocial Behaviour Order is taken against a young person, the Youth Offender Forum will monitor progress throughout the life of the ASBO, and make recommendations as to applications to have the Order discharged whenever the Forum feels that the Antisocial Behaviour Order no longer serves its purpose. The guidance requires that the situation is reviewed on a regular basis and certainly every six months to assess the effect the order is having.

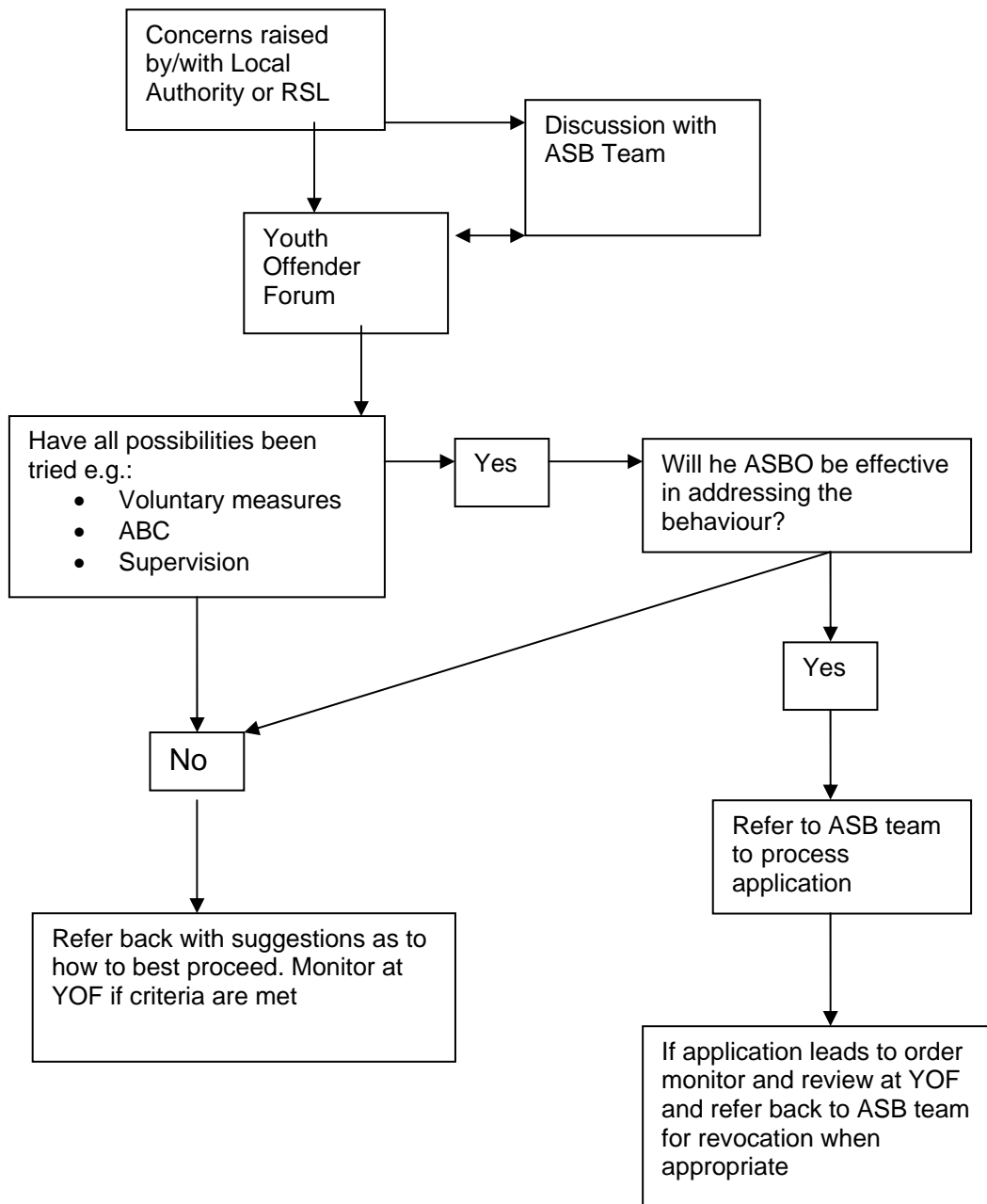
This should involve discussing with any original complainer and others affected by a breach whether the situation has improved. This need not happen at the YOF. For example, the Police or agency that dealt with the original complaint could liaise out with the YOF with the complainer.

At least once per annum the YOF must consider whether the order could now be varied or revoked and formally record the decision. This is particularly important where indefinite orders are concerned.

All consideration of ASBOS, including regarding reviews, must be recorded in YOF minutes and on case files.

Should there be disagreement about any issues relating to ASBOs at the YOF, discussion should be continued to allow every chance of a consensus decision to be made. However, if this is not possible the case should be referred to the Area Children's Service Manager, together with a record of the discussion at the Forum. The Area Children's Service Manager will make the final decision based on the views expressed by the Forum members.

The attached chart summarises the process that the Youth offender Forum will be involved on in ASBO applications. It does not show the full legal process. This can be found in the associated guidance.



Part Three: Briefing Paper – Highland Intensive Support Service and ISMS

Introduction

Highland will establish an Intensive Support Service from December 2004. The aims of ISS are to:

1. ensure a quality, intensive service to young people who are placing themselves or others at risk;
2. reduce youth crime and promote community safety;
3. divert young people from out of authority placements including secure care;
4. prevent family or placement breakdowns;
5. support young people and their families when young people have been returned home, to avoid a return into local authority care;
6. work in partnership across agencies / professionals to ensure a continuity of education, health and support services.

ISS will also provide the additional support to any young people who become subject to Intensive Support & Monitoring Arrangements (ISMS) within the Children's Hearings System

Intensive Support Service

ISS is intended for a small group of the most vulnerable, at risk and risk-taking young people across the authority. This must involve at least one of the following criteria:

- i. a young person is placing his/her physical, mental or moral welfare at such risk that their current looked after placement may not be sustainable;
- ii. a young person is placing the physical, mental or moral welfare of others at risk, which may be reduced by intensive and out-of-hours services;
- iii. a young person is returning to Highland from an out-of-authority placement, and requires intensive support to reduce the risk of physical, mental or moral harm to themselves or others.

ISS will be managed by NCH Scotland within the Highland Youth Action Service (YAS). It will be available to young people within the Inner Moray Firth, greater Fort William and Caithness areas.

It will provide up to 30 hours provision for 8 - 14 young people who are looked after, with an emphasis on support at critical times of the day and week, including evenings and weekends. It will be built around evidence-based six-week programmes, complementing the day-time services that are available to these young people. It will include the possibility of emergency time-out residential provision.

The six-week programme will address a range of needs and issues, including: personal motivation; attitude to offending; thinking & behaviour; family & personal relationships; perceptions of self & others; education, employment; emotional/mental health; physical health; substance misuse; lifestyle; neighbourhood & living arrangements

The local authority will be responsible for securing the range of required services for these young people. As part of this, all young people subject to ISS will have their health and

educational needs further reviewed by dedicated Looked after Children Officers, involving appropriate consultation with colleagues.

A consultant psychiatrist will meet with the ISS Team every four weeks, to provide direct support to the Team, and also to review their involvement with young people.

ISS will have an initial capacity for up to 10 young people. Once the service is established, it is intended that this capacity will increase.

The capacity at any time will always be dependent on levels of need. This will take account of the proportion of young people who are subject to ISMS, as these young people are likely to have the highest needs, as well as the associated additional management, planning and support arrangements.

Phase One (December 2004)	Total Capacity (with associated levels between these)	
	ISS and no monitoring arrangements	ISMS only
Caithness	2	1
Inner Moray Firth	6	3
Greater Fort William	2	1
TOTAL	10	5

Projected Phase Two (provisionally September 2005)	Total Capacity (with associated levels between these)	
	ISS and no monitoring arrangements	ISMS only
Caithness	3	2
Inner Moray Firth	8	4
Greater Fort William	3	2
TOTAL	14	8

Intensive Support & Monitoring Arrangements

ISMS involves:

- ISS; plus
- a movement restriction condition, as part of a supervision requirement.

A Children's Hearing can consider the imposition of 'movement restriction condition' to a supervision requirement as an alternative to a condition 'authorising the use of secure accommodation', if the young person meets the amended criteria for secure accommodation:

- (a) having previously absconded, is likely to abscond, and if s/he absconds, it is likely that her/his physical, mental or moral welfare will be at risk: or
- (b) is likely to injure her/himself or some other person

Accordingly, ISMS can be applied both where a young person presents a risk to others, and where a young person presents a risk to her/himself. The Children's Hearing must be satisfied that it is necessary to impose such a condition.

A 'movement restriction condition' means

- (a) restricting the child's movements in such a way as may be specified in the supervision requirement;
- (b) requiring the child to comply with such arrangements, as may be so specified.

The restriction element can cover:

- the requirement to be at any locality at a certain time; or
- the requirement not to be at any locality at a certain time.

ISMS is fundamentally about support, not punishment. Progress towards the desired outcomes is more important than mere compliance with the 'movement restriction'.

Assessment: consideration of appropriate provision

ISS and ISMS are major and significant interventions. They should only be considered where a focussed assessment has identified what the programme will offer, and as part of a structured intervention plan.

The ASSET assessment tool must be used with young people where offending or substance misuse is the issue, and should be completed by a Youth Action Team worker.

Where offending is not an issue, and ISS is being considered to protect a young person who is presenting a risk to her/himself, a Child in Need assessment should provide the plan for intervention. This assessment will be carried out by a Social Worker from the Areas Children & Families Team.

ASSET should be used alongside a Child in Need Assessment by a Children & Families Team where there are both offending and non-offending risk factors.

The assessment must make clear why an intensive service is required, including:

- what the particular risks are;
- the strengths and protective factors in a young person's life;
- social, health and educational needs;
- the outcomes that are sought.

Where ISMS is recommended, the assessment must make clear why a movement restriction condition is necessary. As ISMS involves a restriction of liberty, young people will have access to legal representation, and any order will be subject to an appeals process.

Referral

Access to ISS is via the Residential Placement Group (RPG). This includes senior managers, consultant clinicians, the Principal Educational Psychologist and ISS Manager, and is chaired by the Joint Head of Service. The RPG provides senior management accountability for the allocation of high-level services, ensuring that such decisions are taken on a planned and equitable basis.

Referrals to the RPG should come from local Service Managers, representing Area Children's Services Forums/Youth Offender Forums. They must include the appropriate assessment and a clear intervention plan.

Children's Hearings can also make a referral, as detailed below.

Most of the young people who are considered for ISS will already be subject to a supervision requirement. However, ISS should not normally be undertaken as a compulsory measure, but on the basis of voluntary participation.

Accordingly, the intervention plan should be agreed between the young person (and family as appropriate) and case manager, and where possible it should include a contract confirming the young person's involvement. In such cases, the contribution and impact of ISS should be reported to the Children's Hearing, as and when reviews occur.

In cases where ISS is appropriate, but could be ineffective without compulsory measures, a Children's Hearing will have to consider the assessment and plan, and whether to impose such conditions.

In an active ISS placement, where voluntary involvement is not proving successful, the need for compulsory measures should be considered at an ISS review, and should be agreed by the Chair of the RPG before a request is made to the Children's Reporter for a Review Hearing. Any request for a Review Hearing should be accompanied by a background report, including the assessment and intervention plan, and a Hearing will normally be held within 2 weeks.

ISMS is an alternative disposal for young people who meet the criteria for secure care. Recommendations for ISMS will come via the RPG, but it is for the Hearing to determine whether the criteria are met, and whether it is necessary to impose ISMS.

The Hearing must be presented with the assessment and intervention plan. It can impose variations or additional conditions to the plan. If ISMS is imposed, the Hearing will ensure a review date.

It is possible that a Children's Hearing may wish to consider ISS or ISMS when an assessment or RPG screening process has not taken place. Where such a situation arises, the Hearing should be asked to continue the case to allow for a prompt assessment and referral to be presented to the RPG, and suitability for ISS/ISMS considered.

In cases where the Residential Placement Group believes that ISS/ISMS is inappropriate, it will provide the reasons for this decision to be incorporated in the report to the continued Hearing, along with a recommendation for an alternative course of action. It is hoped that by using this process, the screening process and the Hearing system can work together to best meet the needs of individual young people being considered for intensive support.

Case Management

Case management will be assigned to a local authority Social Worker:

- If a young person is mainly subject to ISS on offending grounds or because of substance misuse, it will be allocated to a Social Worker or Senior Social Worker from the Youth Action Team.
- Where offending grounds are not the main factor, it will be a Social Worker from an Area Children and Families Team.

The Case Manager will:

- co-ordinate assessment of potential cases and report to the RPG and Children's Hearing;
- link with the keyworker (see below) to ensure that the programme of intervention is implemented;
- co-ordinate multiple service interventions where this is required;
- liaise with the monitoring contractor with regard to implementation of monitoring arrangements, check compliance and initiate changes to monitoring arrangements as appropriate;
- manage the process of further ongoing assessment, regular review and regular reporting to the Children's Hearing;
- ensure that there is continuity of planning and service provision beyond the duration of the programme;
- liaise with the Children's Reporter in cases of breach of ISMS requirements.

Each young person will continue to have a clear plan, and reviews will take place at least every two weeks (noting that the maximum Hearing Review period for ISMS is likely to be three monthly) enabling close and effective multi-agency monitoring by the inter-agency support team.

An ISMS monitoring plan will include identification of the various requirements that have been established for the young person, the times and days relevant to these, and those agencies and individuals responsible for the monitoring. It will further detail the action to be taken in case of alerts or breaches of the monitoring arrangements.

ISMS alerts will be sent by the monitoring agency to the Social Work Service, who will immediately inform the ISS Project Co-ordinator or on call ISS manager. The Intensive Support Service will verify the circumstances of the alert at the earliest opportunity, make contact with the young person and notify partner agencies as appropriate regarding further actions. If a young person cannot be located, s/he will be reported to Northern Constabulary as a missing person.

All young people subject to ISS will have the transition away from this intensive service carefully planned and managed, identifying the responsibilities of all agencies. Each plan will lead to the development of specific exit arrangements for the ongoing support of that young person.

All young people subject to ISMS will have a clear exit plan for the termination of monitoring arrangements. As part of this, s/he may continue to be subject to ISS.

It will be the responsibility of the YAS Resources Manager to ensure that all Youth Offender Forums are kept informed of the progress of young people subject to ISS and ISMS.

Key Worker

Each young person subject to ISMS will have an allocated key worker from the NCH ISS staff team. The key worker will:

- participate in the initial and ongoing assessment of the young person;
- put in place the component services of the care, support and monitoring plan and to co-ordinate the continued provision of services;
- review the arrangements, on a weekly basis, with the young person, family/carers and the support and monitoring service providers;
- evaluate progress and report regularly on progress to the case manager with recommendations as necessary for change to the ISMS programme including termination of the programme;
- provide direct one to one support as part of the action plan as appropriate
- plan for, and recommend to the case manager, continuing service involvement as required beyond the life of the ISMS programme

Out of Hours Management

The out of hours Social Work Standby Service will be the first point of contact for any individual or agency with an issue outside of working hours. This Service will access to the Social Work Services data system which will show that young people are subject to ISS/ISMS.

Where an issue cannot be dealt with by the Standby Service, or safely left to the next working day, the Standby Service will contact the on call ISS Manager. This will allow a level of screening, before decisions are made whether to proceed to some level of responsive or emergency service.

The on call Manager will have access to a web based records system which will show relevant information regarding the up-to-date Action Plan for all individuals subject to ISS and ISMS. Where the on call Manager decides that a service is required to be provided at that time, an on call worker will be contacted to provide the service in a manner consistent with the current Action Plan. This will include out of hours home visits, mediation between individuals concerned in any crisis and the option of a time-out facility where appropriate.

Appendix 1: Draft National standard for contact with children on supervision

Introduction

1. This paper sets out proposals for a national standard for the frequency of contact with children on supervision for whom offending is the key issue.

Background

2. In November 2003 Audit Scotland released dealing with offending by young people -a follow-up report. This made a number of recommendations, which the executive agreed to implement. One of these was to consider setting standards for the frequency of contact with children on supervision (as exist for adults on probation).

Existing standards, regulations, guidance and performance indicators

3. The **national standards for Scotland's youth justice services** do not specify a required frequency of contact between a social worker and a child on supervision. They state that the local authority will implement supervision requirements within five working days of the date of being advised of the decision of the children's hearing. They also state that the action plan, developed from the comprehensive assessment.....will state the case management arrangements and the intensity of contact and supervision required.
4. **Regulations** require that all looked after children (accommodated and not accommodated, i.e. all children on supervision), are required to have a care plan. The matters to be addressed in the care plan, according to regulations, include a requirement for the care plan to detail any of the services to be provided to meet the care, education and health needs of the child⁴. The care plan must be in writing. The national standards for Scotland's youth justice services do not refer to care plans, but to action plans which in this context are taken to be synonymous with care plans. The Children (Scotland) Act 1995 also places a duty on other authorities to respond to requests from the local authority to provide services, including Health Boards.
5. The **guidance**, published in the same volume as the regulations to the Children's Act 1995, sets out the duties of the social worker in relation to supervision. The social worker should meet with the family at the hearing, if possible, immediately if there is a significant level of risk, and within two weeks in any case⁷. Contact frequency, in respect of children on supervision, is as follows:
 - For home supervision, contact should be at the level agreed in the care plan;
 - **Where the supervision requirement is based on offence grounds, or where offending is a key issue, contact should be at least fortnightly for the first three months; there will be cases where more frequent contact is required;**
 - Where child protection is the issue the social worker should also ensure that the frequency and nature of contact (whether by social worker, health visitor or other) as agreed in the care plan is adhered to; and
 - Where failure to attend school is the problem, the social worker should again maintain the agreed frequency of contact.
 - Where a young person is looked after and accommodated, the placement should be monitored in line with regulation 18, which specifies visiting the child at his or her placement within a week of the placement being made, not less than three monthly thereafter, on such other occasions as the local authority shall deem necessary in order to

safeguard or promote the child's welfare, and (where reasonable) at the child or foster carer's request.

Whereas the regulations referred to above are legally binding, the guidance is not.

6. **National objectives and standards for social work services** in the criminal justice system, which are referred to in the Audit Scotland follow up report, set out minimum contact frequencies for adults on probation. These were published by the Scottish Office in 1991, following extensive consultation.
7. These adult standards set out expectations for the initial phase of supervision, which might helpfully inform our thinking about services for young people. "The initial phase of supervision is critical in establishing a sound working relationship with the offender. The supervisor is responsible for confirming with offender the working methods which will be used to assist him/her to confront his/her offending behaviour and for setting out the extent of oversight/control which the order will incorporate. The supervisor is also responsible for the smooth running of the arrangements made with people and organisations who may be involved in implementing the action plan and is accountable for his/her line manager for this work."
8. They state that "during the initial phase of supervision the supervisor mustconfirm and if necessary make more specific the action plan outlined in the SER, paying particular attention to identifying specific tasks and responsibilities to be undertaken and setting out both the required frequency of contact and the venue at which the contact will take place."
9. The minimum contact frequencies required by the standards are as follows;
 - In the first month people on probation (the offender) must be seen at least weekly;
 - During the next two months they must be seen at least fortnightly, and weekly where close personal supervision is required; and
 - Contact frequency for the middle phase and final phases of probation should initially be set at the 3 month review, but must never be less than monthly.
10. The **Audit Scotland performance indicator**, from 2003-04, is the proportion of children seen by a supervising officer within 15 days.

Discussion

11. Every child on supervision must have a written care plan, which should set out the planned contact frequency. The 1995 Act guidance suggests how frequent that contact should be. In response to the Audit Scotland report, which focuses on youth justice, this paper suggests strengthening that guidance for those who have been referred on offending grounds, or for whom offending is a significant issue, by increasing the frequency of contact at the beginning of supervision, and establishing a standard measurable minimum.
12. In this case, those for whom offending is a key issue can be defined as "those on whom a comprehensive assessment has been completed including ASSET/YLS-CMI". This definition could be accused of being circular, but appears the best candidate. This definition also builds on objective 1 of the national standards for Scotland's youth justice services.
13. The proposed standard sets out the **minimum** frequency of contact required. Some young people will require a more intensive service on the basis of an assessment of need. Given that

all have reached the threshold where compulsion is required, it seems likely that a level of supervision higher than the minimum set out here will be required in many cases. For some young people, with high levels of need, and posing high level of risk, the level of supervision required may go as far as dawn to dusk, wrap around services.

14. In locations which have established multi-disciplinary teams, the people providing the case management and face to face contact may come from a variety of professional backgrounds. In other locations, social work assistants have been taking on these roles. Since the Local Authority has the statutory duty to safeguard and promote the welfare of those subject to supervision orders, the case manager should always be an employee of the local authority, to maintain lines of accountability in the discharge of this social work function, and specifically regarding those providing the face to face contact. The case manager must have the requisite skills and knowledge to fulfil this role. This is unlikely to be the case with social work assistants.

Proposals

15. Existing regulation requires a written care plan to be produced, which should detail any of the services to be provided, to meet the care, education and health needs of the child. The care plan must set out the nature of contact required to meet the young person's needs. The social worker should ensure that the frequency and nature of contact (whether by social worker, health visitor or other) as agreed in the care plan, is adhered to. This already applies to all children on supervision.
16. In addition, where the supervision requirement is based on offence grounds, or where a comprehensive assessment has been completed using ASSET/YLS-CMI offending, the care plan (described as an action plan in the national standards for Scotland's youth justice services) should specify contact frequency at no less than;
 - Twice in the first week;
 - Weekly for the following two months;
 - Fortnightly thereafter up to and including the third month; and
 - Never less than monthly thereafter, for the duration of supervision.
17. Contact should be face to face, with the young person, by the case manager, or by someone nominated by him or her, in line with the action plan/care plan. The case manager should see the young person face to face at least monthly where more frequent contact has been delegated by them to a third party (see below).
18. Where the person providing the contact is not the case manager, they should be duly authorised by the case manager to act on behalf of the local authority. The case manager should ensure that the care plan sets out the required frequency and nature of contact, whether by the social worker, a specified project worker, or others. He or she should also ensure that it is adhered to. He or she must have the requisite skills and knowledge to fulfil this role.

Proposed text for insertion in the revised standards

19. The local authority will ensure face to face contact with all young people on supervision on whom an ASSET/YLS-CMI has been completed, by the case manager or someone nominated by him or her, at the frequency set out in the action plan, and never less than;
 - Twice in the first week;
 - Weekly for the following two months;
 - Fortnightly thereafter up to and including the third month; and
 - Never less than monthly thereafter, for the duration of supervision.
20. Face to face contact with the local authority case manager him or herself should not be less than monthly.

How should these be issued?

21. Through insertion into the revised version of the national standards for Scotland's youth justice services

Appendix 2: ANTISOCIAL BEHAVIOUR (SCOTLAND) ACT 2004 - COMMENCEMENT TIMETABLE

PART	SUBJECT	PLANNED COMMENCEMENT	FURTHER INFORMATION
1	ASB Strategies	28 October 2004	Draft guidance published 9 July. Final guidance for commencement.
2	ASBOs	28 October 2004	Draft guidance published 9 July. Final guidance for commencement.
3	Dispersal of groups	28 October 2004	Draft guidance published 9 July. Final guidance for commencement.
4	Closure of Premises	28 October 2004	Draft guidance published 9 July. Final guidance for commencement.
5	Noise nuisance	Autumn 2004 (?)	Draft guidance published 9 July. Final guidance for commencement.
6	Environmental offences	28 October 2004	
6	Graffiti removal	Autumn 2004	Draft guidance published 9 July. Final guidance for commencement.
7	Housing: ASB notices	Summer 2005	Working Group established to plan implementation
8	Registration of private landlords	Autumn 2005	Working Group established to plan implementation
9	Parenting Orders	To be confirmed	Phased introduction
10	ASBOs on conviction	Autumn 2004	
10	Community Reparation Orders	Autumn 2004 (NB: not in effect until regulations made)	Pilots in Inverness, Dundee and Greenock from January 2005
10	Restriction of Liberty Orders for u16s	Late 2004	
10	Ban on sale of spray paint to u16s	Autumn 2004	Guidance for commencement. Warning notices to be provided for retailers
10	Seizure of vehicles	Autumn 2004 (NB: not in effect until regulations made)	
11	Fixed penalty notices	Autumn 2004 (NB: not in effect until regulations made)	Pilot in Tayside from January 2005
12	Tagging through children's hearings	Phase 1 implementation from late 2004	Consultation on guidance in autumn
12	Local authority accountability	Early 2005	Consultation on guidance in autumn
13	Privacy of certain proceedings	Autumn 2004	
13	Disclosure and sharing of information	Autumn 2004	Guidance to be published for commencement.
13	Equal opportunities	Autumn 2004	